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FILED

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**SECRETARY, BOARD OF
OIL, GAS & MINING**

Attorneys for Utah Division of Oil, Gas and Mining

BEFORE THE UTAH BOARD OF OIL, GAS AND MINING

In the matter of: reclamation at the BMC
Seep's Ridge Road Pit mine, permit no.
S/047/0119, operated by Blue Mountain
Crushing, LLC, located in in
southeastern Uintah County, Utah

Findings of Fact,
Conclusions of Law, and Order

Docket No. 2015-029
Cause No. S/047/0119

This matter came before the Utah Board of Oil, Gas and Mining (the Board) at its regularly scheduled hearing on December 9, 2015 in the auditorium of the Utah Department of Natural Resources building, 1594 West North Temple, Salt Lake City, Utah 84116. The hearing addressed a Notice of Agency Action filed by the Utah Division of Oil, Gas and Mining (the Division) to forfeit a reclamation surety and reclaim the BMC Seep's Ridge Road Pit mine.

The following Board members were present at the hearing: Chairman Ruland Gill, Jr., Gordon L. Moon, Michael Brown, Carl Kendell, and Susan S. Davis. Michael

Johnson, Assistant Attorney General, represented the Board. The Division appeared through its counsel Melissa L. Reynolds, Assistant Attorney General. April Abate, Environmental Scientist III, Utah Division of Oil, Gas and Mining, testified on behalf of the Division. Neither Blue Mountain Crushing, LLC nor any other party filed an objection or appeared at the hearing to respond to the Notice of Agency Action. Acting on behalf of Fidelity and Deposit Company of Maryland, Zurich American Insurance Company entered into a Stipulation with the Division in lieu of Fidelity filing pleadings or entering an appearance at the hearing. At the conclusion of the hearing, the Board voted unanimously to approve the Division's Notice of Agency Action.

Now, the Board, having heard the testimony and reviewed the exhibits, makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The Division sent its Notice of Agency Action to Blue Mountain Crushing, LLC (BMC) through its registered agent, Grimmer and Associates, PC. The Division has a certified return receipt indicating that the registered agent received the Notice of Agency Action. BMC failed to attend or participate in the hearing.

2. BMC filed a Notice of Intention to Commence Small Mining Operations (an NOI) at the BMC Seep's Ridge Road Pit mine (the Mine) in October 2013. On November 5, 2013, the Division notified BMC that the NOI was complete and that the Division approved the reclamation surety.

3. The Utah School and Institutional Trust Lands Administration (SITLA) owns both the surface estate and the mineral estate where the Mine is located.

4. Fidelity and Deposit Company of Maryland (Fidelity) is the underwriter of the reclamation bond in the amount of \$62,200. The Division received a Notice of Cancellation from Fidelity terminating the bond on July 30, 2014. The bond's termination became effective on October 29, 2014.

5. The reclamation contract required BMC to provide a replacement surety by September 28, 2014.

6. BMC never provided a replacement surety, so the Division issued a Cessation Order on October 29, 2014 requiring reclamation of the Mine. BMC never reclaimed the Mine.

7. The Division entered into a Stipulation for Dismissal and Release of Claims (the Stipulation) with Zurich American Insurance Company (Zurich), acting on behalf of Fidelity, on December 4, 2015. Zurich entered into the Stipulation in lieu of Fidelity filing a response or entering an appearance at the hearing. The Stipulation was filed with the Board on December 4, 2015.

8. The Stipulation required Zurich to send the full \$62,200 to the Division, and sought approval from the Board authorizing the Division to use the money to conduct reclamation at the Mine. In accordance with the Stipulation, Zurich provided the full surety amount of \$62,200 to the Division on December 9, 2015.

9. The Division assessed civil penalties of \$396 for the Cessation Order, which BMC has not paid.

10. In its Notice of Agency Action, the Division sought additional civil penalties of \$22,500 under Utah Administrative Code Rule 647-7-103.4, for a total amount of \$22,896.

CONCLUSIONS OF LAW

11. The Board has jurisdiction over this matter under the Utah Mined Land Reclamation Act (the Act), which grants the Board "jurisdiction and authority over all persons and property, both public and private, necessary to enforce this chapter." Utah Code § 40-8-5(1).

12. The Act also grants the Board the authority to "hold hearings and to issue orders or other appropriate instruments based upon the results of those hearings." Utah Code § 40-8-6(2).

13. After notice and hearing, the Board has the authority to order the Division to conduct reclamation of a mine when an operator fails or refuses to conduct reclamation. Utah Admin. Code R647-3-112.1.

14. Since October 29, 2014, BMC has had an obligation to reclaim the Mine. BMC has failed or refused to conduct reclamation as required by its NOI and failed or refused to comply with Utah Administrative Code Rule 647-3-109.

15. Under the bond agreement, upon the effective date of the bond's termination, Fidelity "remain[s] fully liable for all reclamation obligations of [BMC] incurred prior to the date of termination." Bond Agreement p. 2.

16. The disturbance that currently exists at the Mine existed before Fidelity cancelled the bond. Fidelity is liable for all of the reclamation required at the Mine.

17. Due to BMC's failure to reclaim, the Board has authority to order that the surety be forfeited and used for reclamation. Utah Admin. Code R647-3-112.3.11.

18. Under the Stipulation, upon the Division's receipt of the full surety amount and the Board's approval of the Stipulation, Fidelity is released from all claims the Division has against it in this matter.

19. Under Utah Administrative Code Rule 647-7-103.4, "[w]hen a violation contained in a cessation order has not been abated, a civil penalty of not less than \$750.00 will be assessed for each day during which such failure continues, except that, if the permittee or operator initiates review proceedings with respect to the violation, the abatement period will be extended[.]"

20. BMC did not initiate review proceedings with respect to the violation, and never reclaimed the site as required by the October 29, 2014 Cessation Order.

21. The minimum \$750 daily penalty was properly assessed, and the Division's assessment of this penalty for 30 days—for a total of \$22,500—was appropriate. Given these penalties, in addition to the \$396 originally assessed for the Cessation Order, BMC is liable for \$22,896 in civil penalties.

22. The Board has authority to request that the Attorney General recover these civil penalties in a civil action brought in District Court. Utah Code § 40-8-9.1(4).

ORDER

Based on the findings of fact and conclusions of law outlined above, the Board hereby orders as follows:

A. The Stipulation entered into by the Division and Zurich on December 4, 2015 is approved.

B. The Division is directed to conduct reclamation of the Mine with the money provided by Zurich on behalf of Fidelity.

C. Once the Division deems reclamation complete, the Division is directed return any amount not used for reclamation to Zurich.

D. Fidelity is released from liability for all claims the Division had against it in this matter.

E. The civil penalties against BMC amounting to \$22,896 are warranted, and the Attorney General's Office may seek to recover the penalties in a civil action in an appropriate district court as it deems appropriate.

F. **Notice of right to judicial review.** As required by Utah Code § 63G-4-208, the Board notifies all parties in interest that they have the right to seek judicial review of this final Order by timely filing a petition for judicial review with the Utah Supreme Court within 30 days after the date this Order is issued. Utah Code §§ 63G-4-401(3)(a) and 403.

G. **Notice of right to apply for reconsideration.** The Board notifies all parties that as an alternative to seeking judicial review, and not as a prerequisite to doing so, a party may file a request for reconsideration within 20 days after the date that this Order is issued. Utah Code § 63G-4-302(1).

H. The Board retains continuing jurisdiction over all of the matters covered by this Order and the parties affected by this Order. Specifically, the Board retains and

reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

I. For all purposes, the Chairman's signature on a facsimile or electronic copy of this Order will be deemed the equivalent of a signed original.

ORDERED this 14th day of January, 2016.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

A handwritten signature in blue ink, reading "Ruland J. Gill Jr.", is written over a horizontal line.

Ruland J. Gill Jr., Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2016, I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER for Docket No. 2015-029 Cause No. S/047/0119, to be mailed by Email or via First Class Mail with postage prepaid, to the following:

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